**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 21165 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.M.KAPADIA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RAVJIBHAI GOTHABHAI CHAUHAN - Petitioner(s)**
**Versus**
**MELAJI SHANKARJI CHAUHAN - Respondent(s)**

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**Appearance :**
MR HM PARIKH for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5, 1.2.6,1.2.7
RULE SERVED for Respondent(s) : 1,
MR SHAILESH C SHARMA for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**

**Date : 14/12/2006**

**ORAL JUDGMENT**

1. By instant petition under Article 227 of the Constitution of India, the petitioners /

original Defendants seek to challenge the order dated 12.1.2005 rendered in Civil Misc. Appeal No. 20 of 2000 by the learned Joint District Judge, 10th Fast Track Court, Nadiad, by which Appeal filed by the present petitioners has been dismissed and thereby order dated 12.1.2000 recorded below application exh.5 in Civil Suit no. 327 of 1999 by the learned Civil Judge (JD), Mehmedabad, has been affirmed. By the said order the learned Civil Judge has granted interim injunction in favour of the respondent / original plaintiff as prayed for in the suit with regard to the suit property bearing block no. 32 of village Sundha, Taluka Mehmedabad and thereby restrained the petitioners from interfering with the possession of the respondent on the suit property.

2. Having heard Mr. H.M.Parikh, learned advocate of the petitioner and Mr. Shailesh C. Sharma, learned advocate of the respondent and a perusal of both the impugned orders, wherein concurrent findings of fact has been recorded with regard to the actual and physical possession of the respondent Plaintiff's over the suit property, it is seen that both the Courts below have not committed any jurisdictional error. It is a settled principle of law that the concurrent findings of fact recorded by both the Courts below cannot be substituted by this Court unless it is demonstrated before this Court that the findings of fact recorded by both the Courts

below is so perverse, capricious or arbitrary, requiring interference of this Court in a petition filed under Article 227 of the Constitution of India.

3. Seen in the above context, the petition lacks merit and deserves to be rejected.

4. For the foregoing reasons, the petition fails and is accordingly rejected with no order as to costs. Rule is discharged.

5. Needless to mention that no observation made by the learned trial Judge nor by the learned appellate Judge while deciding the applications filed by the respondent, seeking interim injunction shall be construed as an expression of opinion on the merits of the Suit. The learned trial Judge shall decide the suit strictly in accordance with law uninfluenced by the fact that the application exh.5 seeking interim injunction has been decided in favour of the respondent / plaintiff.

6. The learned trial Judge shall also expedite the hearing of the Suit. It is expected of both the parties to cooperate with the learned trial Judge in expeditious disposal of the suit.

(A.M.Kapadia,J)

Jayanti*